

ARGONNE TERMS AND CONDITIONS

(For Non-Commercial Awards Under \$10,000)

ANL-460 (Rev. Jun-29-00)

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1. ACCEPTANCE

Acceptance of this Purchase Order (hereinafter called the “contract”) must be in accordance with and strictly limited to the Terms and Conditions contained herein. An attempted acknowledgement or acceptance which contains provisions conflicting or additional to the Terms and Conditions herein set forth or which varies any term or condition shall have no force or effect. Performance by the Contractor without an effective acknowledgement shall be deemed to be performance in accordance with the Terms and Conditions of this contract.

2. PAYMENTS

The Laboratory shall pay the Contractor, upon the submission of proper invoices or vouchers, the prices stipulated in this contract for supplies delivered and accepted or services rendered and accepted, less any deductions provided in this contract. Unless otherwise specified in this contract, payment shall be made on partial deliveries accepted by the Laboratory if:

- (a) The amount due on the deliveries warrants it; or
- (b) The Contractor requests it and the amount due on the deliveries is at least \$1,000 or 50 percent of the total contract price.
- (c) In the event payment is made by wire transfer, the Laboratory will deduct \$7.50 from each invoice for domestic wire transfers and \$20.00 for each international wire transfer.

3. COVENANT AGAINST CONTINGENT FEES

- (a) The Contractor warrants that no person or agency has been employed or retained to solicit or obtain this contract upon an agreement or understanding for a contingent fee, except a bona fide employee or agency. For breach or violation of this warranty, the Laboratory shall have the right to annul this contract without liability or, in its discretion, to deduct from the contract price or consideration, or otherwise recover, the full amount of the contingent fee.
- (b) “Bona fide agency,” as used in this clause, means an established commercial or selling agency, maintained by a Contractor for the purpose of securing business, that neither exerts nor proposes to exert improper influence to solicit or obtain Government contracts nor holds itself out as being able to obtain any Government contract or contracts through improper influence.

“*Bona fide employee*,” as used in this clause, means a person, employed by a Contractor and subject to the Contractor’s supervision and control as to time, place, and manner of performance, who neither exerts nor proposes to exert improper influence to solicit or obtain Government contracts nor holds out as being able to obtain any Government contract or contracts through improper influence.

“*Contingent fee*,” as used in this clause, means any commission, percentage, brokerage, or other fee that is contingent upon the success that a person or concern has in securing a Government contract.

“Improper influence,” as used in this clause, means any influence that induces or tends to induce a Government employee or officer to give consideration or to act regarding a Government contract on any basis other than the merits of the matter.

4. CONVICT LABOR

The Contractor agrees not to employ in the performance of this contract any person undergoing a sentence of imprisonment which has been imposed by any court of a State, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, or the Trust Territory of the Pacific Islands. This limitation, however, shall not prohibit the employment by the Contractor in the performance of this contract of persons on parole or probation to work at paid employment during the terms of their sentence or persons who have been pardoned or who have served their terms. Nor shall it prohibit the employment by the Contractor in the performance of this contract of persons confined for violation of the laws of any of the States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, or the Trust Territory of the Pacific Islands who are authorized to work at paid employment in the community under the laws of such jurisdiction, if-

- (a)
 - (1) The worker is paid or is in an approved work training program on a voluntary basis;
 - (2) Representatives of local union central bodies or similar labor union organizations have been consulted;
 - (3) Such paid employment will not result in the displacement of employed workers, or be applied in skills, crafts, or trades in which there is a surplus of available gainful labor in the locality, or impair existing contracts for services; and
 - (4) The rates of pay and other conditions of employment will not be less than those paid or provided for work of a similar nature in the locality in which the work is being performed; and
- (b) The Attorney General of the United States has certified that the work-release laws or regulations of the jurisdiction involved are in conformity with the requirements of Executive Order 11755, as amended by Executive Orders 12608 and 12943.

5. AFFIRMATIVE ACTION FOR HANDICAPPED WORKERS

(a) General.

- (1) Regarding any position for which the employee or applicant for employment is qualified, the Contractor shall not discriminate against any employee or applicant because of physical or mental handicap. The Contractor agrees to take affirmative action to employ, advance in employment, and otherwise treat qualified handicapped individuals without discrimination based upon their physical or mental handicap in all employment practices such as:
 - (i) Employment;
 - (ii) Upgrading;
 - (iii) Demotion or transfer;
 - (iv) Recruitment;
 - (v) Advertising;
 - (vi) Layoff or termination;
 - (vii) Rates of pay or other forms of compensation; and
 - (viii) Selection for training, including apprenticeship.
- (2) The Contractor agrees to comply with the rules, regulations, and relevant orders of the Secretary of Labor (Secretary) issued under the Rehabilitation Act of 1973 (29 U.S.C. 793) (the Act), as amended.

(b) Postings.

- (1) The Contractor agrees to post employment notices stating (I) the Contractor's obligation under the law to take affirmative action to employ and advance in employment qualified handicapped individuals and (ii) the rights of applicants and employees.
- (2) These notices shall be posted in conspicuous places that are available to employees and applicants for employment. They shall be in a form prescribed by the Director, office of Federal Contract Compliance Programs, Department of Labor (Director), and provided by or through the Laboratory.
- (3) The Contractor shall notify each labor union or representative of workers with which it has a collective bargaining agreement or other contract understanding, that the Contractor is bound by the terms of Section 503 of the Act and is committed to take affirmative action to employ, and advance in employment, qualified physically and mentally handicapped individuals.

- (c) Noncompliance. If the Contractor does not comply with the requirements of this clause, appropriate actions may be taken under the rules, regulations, and relevant orders of the Secretary issued pursuant to the Act.
- (d) Subcontracts. The Contractor shall include the terms of this clause in every subcontract or purchase order in excess of \$2,500 unless exempted by rules, regulations, or orders of the Secretary. The Contractor shall act as specified by the Director to enforce the terms, including action for noncompliance.

6. APPLICABLE LAW

To the extent that Federal law does not exist and State law could become applicable to this contract, the law of Illinois shall apply.

7. NOTICE TO THE LABORATORY OF LABOR DISPUTES

- (a) If the Contractor has knowledge that any actual or potential labor dispute is delaying or threatens to delay the timely performance of this contract, the Contractor shall immediately give notice, including all relevant information, to the Laboratory.
- (b) The Contractor agrees to insert the substance of this clause, including this paragraph (b), in any subcontract to which a labor dispute may delay the timely performance of this contract; except that each subcontract shall provide that in the event its timely performance is delayed or threatened by delay by any actual or potential labor dispute, the subcontractor shall immediately notify the next higher tier subcontractor or the Contractor, as the case may be, of all relevant information concerning the dispute.

8. REPORTS

The Contractor shall furnish intermediate reports to the Laboratory from time to time when requested, in such form and number as may be required by the Laboratory, summarizing activities of the Contractor under this contract and shall make such final reports as may be required by the Laboratory. All reports delivered to the Laboratory under this contract shall contain a signature page which will identify the persons preparing the report and the persons approving the report.

9. CHANGES - FIXED-PRICE

- (a) The authorized Laboratory Procurement Official may at any time, by written order, and without notice to the sureties, if any, make changes within the general scope of this contract in any one or more of the following:

- (1) Drawings, designs, or specifications when the supplies to be furnished are to be specially manufactured for the Laboratory in accordance with the drawings, designs, or specifications.
 - (2) Method of shipment or packing.
 - (3) Place of delivery.
 - (4) Description of services to be performed.
- (b) If any such change causes an increase or decrease in the cost of, or the time required for, performance of any part of the work under this contract, whether or not changed by the order, the authorized Laboratory Procurement Official shall make an equitable adjustment in the contract price, the delivery schedule, or both, and shall modify the contract.
 - (c) The Contractor must submit any "proposal for adjustment" (here after referred to as proposal) under this clause within 30 days from the date of receipt of the written order. However, if the authorized Laboratory Procurement Official decides that the facts justify it, the authorized Laboratory Procurement Official may receive and act upon a proposal submitted before final payment of the contract.
 - (d) If the Contractor's proposal includes the cost of property made obsolete or excess by the change, the authorized Laboratory Procurement Official shall have the right to prescribe the manner of the disposition of the property.
 - (e) Nothing in this clause shall excuse the Contractor from proceeding with the contract as changed.

10. EXTRAS

Except as otherwise provided in this contract, no payment for extras shall be made unless such extras and the price therefor have been authorized in writing by the authorized Laboratory Procurement Official.

11. WARRANTY OF SUPPLIES

- (a) Notwithstanding inspection and acceptance by the Laboratory of supplies furnished under this contract or any provision of this contract concerning the conclusiveness thereof, the Contractor warrants that at the time of delivery:
 - (1) All supplies furnished under this contract will be new, free from defects in material or workmanship, and will conform with the specifications and all other requirements of this contract; and

- (2) The preservation, packaging, packing and marking, and the preparation for, and method of, shipment of such supplies will conform with the requirements of this contract.
- (b) The Laboratory shall give written notice to the Contractor of any breach of the warranties in paragraph (a) of this clause within 18 months after delivery of the nonconforming supplies or 12 months after initial use, whichever is earlier.
- (c) Within a reasonable time after such notice, the Laboratory may either:
 - (1) By written notice require the prompt correction or replacement of any supplies or parts thereof (including preservation packaging, packing, and marking) that do not conform with the requirements of this contract within the meaning of paragraph (a) of this clause; or
 - (2) Retain such supplies, whereupon the contract price thereof shall be reduced by an amount equitable under the circumstances.
- (d) When return, correction, or replacement is required, transportation charges and responsibility for such supplies while in transit shall be borne by the Contractor. However, the Contractor's liability for such transportation charges shall not exceed an amount equal to the cost of transportation by the usual commercial method of shipment between the place of delivery specified in this contract and the Contractor's plant, and return.
- (e) The Laboratory may, by contract or otherwise, correct or replace the nonconforming supplies with similar supplies and charge to the Contractor the cost occasioned to the Laboratory thereby if the Contractor (1) fails to make redelivery of the corrected or replaced supplies within the time established for their return, or (2) fails either to accept return of the nonconforming supplies or fails to make progress after their return to correct or replace them so as to endanger performance of the delivery schedule, and in either of these two circumstances does not cure such failure within a period of 10 days (or such longer period as the Laboratory may authorize in writing) after receipt of notice from the Laboratory specifying such failure. In lieu of such correction or replacement, the Laboratory may require an equitable adjustment of the contract price. In addition, if the Contractor fails to furnish timely disposition instructions, the Laboratory may dispose of the nonconforming supplies for the Contractor's account in a reasonable manner. The Laboratory is entitled to reimbursement from the Contractor or from the proceeds of such disposal for the reasonable expenses of the care and disposition of the nonconforming supplies, as well as for excess costs incurred or to be incurred.
- (f) Any supplies or parts thereof corrected or furnished in replacement pursuant to this clause shall also be subject to all the provisions of this clause to the same extent as supplies initially delivered. The warranty with respect to such supplies or parts thereof shall be equal in duration to that set forth in paragraph (a) above and shall run from the date of delivery of such corrected or replaced supplies.
- (g) The word "supplies" as used herein means the end item furnished by the Contractor and related services required under the contract. The word does not include "data."

- (h) The rights and remedies of the Laboratory provided in this clause are in addition to and do not limit any rights afforded to the Laboratory by any other clause of the contract or by law.

12. RESPONSIBILITY FOR SUPPLIES

- (a) Title to supplies furnished under this contract shall pass to the Government upon formal acceptance by the Laboratory, regardless of when or where the Laboratory takes physical possession, unless the contract specifically provides for earlier passage of title.
- (b) Unless the contract specifically provides otherwise, risk of loss of or damage to supplies shall remain with the Contractor until, and shall pass to the Laboratory upon:
 - (1) Delivery of the supplies to a carrier, if transportation is f.o.b. origin; or
 - (2) Acceptance by the Laboratory or delivery of the supplies to the Laboratory at the destination specified in the contract, whichever is later, if transportation is f.o.b. destination.
- (c) Paragraph (b) above shall not apply to supplies that so fail to conform to contract requirements as to give a right of rejection. The risk of loss of or damage to such nonconforming supplies remains with the Contractor until cure or acceptance. After cure or acceptance, paragraph (b) above shall apply.
- (d) Under paragraph (b) above, the Contractor shall not be liable for loss of or damage to supplies caused by the negligence of officers, agents, or employees of the Laboratory acting within the scope of their employment.

13. INSPECTION OF SUPPLIES - FIXED-PRICE

- (a) Definition. "Supplies," as used in this clause, includes but is not limited to raw materials, components, intermediate assemblies, end products, and lots of supplies.
- (b) The Contractor shall provide and maintain an inspection system acceptable to the Laboratory covering supplies under this contract and shall tender to the Laboratory for acceptance only supplies that have been inspected in accordance with the inspection system and have been found by the Contractor to be in conformity with contract requirements. As part of the system, the Contractor shall prepare records evidencing all inspections made under the system and the outcome. These records shall be kept complete and made available to the Laboratory during contract performance and for as long afterwards as the contract requires. The Laboratory may perform reviews and evaluations as reasonably necessary to ascertain compliance with this paragraph. These reviews and evaluations shall be conducted in a manner that will not unduly

delay the contract work. The right of review, whether exercised or not, does not relieve the Contractor of the obligations under the contract.

- (c) The Laboratory has the right to inspect and test all supplies called for by the contract, to the extent practicable, at all places and times, including the period of manufacture, and in any event before acceptance. The Laboratory shall perform inspections and tests in a manner that will not unduly delay the work. The Laboratory assumes no contractual obligation to perform any inspection and test for the benefit of the Contractor unless specifically set forth elsewhere in this contract.
- (d) If the Laboratory performs inspection or test on the premises of the Contractor or a subcontractor, the Contractor shall furnish, and shall require subcontractors to furnish, without additional charge, all reasonable facilities and assistance for the safe and convenient performance of these duties. Except as otherwise provided in the contract, the Laboratory shall bear the expense of Laboratory inspections or tests made at other than the Contractor's or subcontractor's premises; provided that in case of rejection, the Laboratory shall not be liable for any reduction in the value of inspection or test samples.
- (e)
 - (1) When supplies are not ready at the time specified by the Contractor for inspection or test, the Laboratory may charge to the Contractor the additional cost of inspection or test.
 - (2) The Laboratory may also charge the Contractor for any additional cost of inspection or test when prior rejection makes reinspection or retest necessary.
- (f) The Laboratory has the right either to reject or to require correction of nonconforming supplies. Supplies are nonconforming when they are defective in material or workmanship or are otherwise not in conformity with contract requirements. The Laboratory may reject nonconforming supplies with or without disposition instructions.
- (g) The Contractor shall remove supplies rejected or required to be corrected. However, the Laboratory may require or permit correction in place, promptly after notice, by and at the expense of the Contractor. The Contractor shall not tender for acceptance corrected or rejected supplies without disclosing the former rejection or requirement for correction, and when required, shall disclose the corrective action taken.
- (h) If the Contractor fails to promptly remove, replace, or correct rejected supplies that are required to be removed or to be replaced or corrected, the Laboratory may either (1) by contract or otherwise, remove, replace, or correct the supplies and charge the cost to the Contractor or (2) terminate the contract for default. Unless the Contractor corrects or replaces the supplies within the delivery schedule, the Laboratory may require their delivery and make an equitable price reduction.
- (i)
 - (1) If this contract provides for the performance of Laboratory quality assurance at source, and if requested by the Laboratory, the Contractor shall furnish advance notification of the time (I) when Contractor inspection or tests will be performed in accordance

with the terms and conditions of the contract and (ii) when the supplies will be ready for Laboratory inspection.

- (2) The Laboratory request shall specify the period and method of the advance notification and the Laboratory representative to whom it shall be furnished. Requests shall not require more than 2 workdays of advance notification if the Laboratory representative is in residence in the Contractor's plant, nor more than 7 workdays in other instances.
- (j) The Laboratory shall accept or reject supplies as promptly as practicable after delivery, unless otherwise provided in the contract. Laboratory failure to inspect and accept or reject the supplies shall not relieve the Contractor from responsibility, nor impose liability on the Laboratory, for nonconforming supplies.
- (k) Inspections and tests by the Laboratory do not relieve the Contractor of responsibility for defects or other failures to meet contract requirements discovered before acceptance. Acceptance shall be conclusive, except for latent defects, fraud, gross mistakes amounting to fraud, or as otherwise provided in this contract.
- (l) If acceptance is not conclusive for any of the reasons in paragraph (k) hereof, the Laboratory in addition to any other rights and remedies provided by law, or under other provisions of this contract, shall have the right to require the Contractor (1) at no increase in contract price to correct or replace the defective or nonconforming supplies at the original point of delivery or at the Contractor's plant at the Laboratory's election, and in accordance with a reasonable delivery schedule as may be agreed upon between the Contractor and the Laboratory; provided, that the Laboratory may require a reduction in contract price if the Contractor fails to meet such delivery schedule, or (2) within a reasonable time after receipt by the Contractor of notice of defects or nonconformance, to repay such portion of the contract as is equitable under the circumstances if the Laboratory elects not to require correction or replacement. When supplies are returned to the Contractor, the Contractor shall bear the transportation cost from the original point of delivery to the Contractor's plant and return to the original point when that point is not the Contractor's plant. If the Contractor fails to perform or act as required in (1) or (2) above and does not cure such failure within a period of 10 days (or such longer period as the Laboratory may authorize in writing) after receipt of notice from the Laboratory specifying such failure, the Laboratory shall have the right by contract or otherwise to replace or correct such supplies and charge to the Contractor the cost occasioned the Laboratory thereby.

14. LABORATORY-FURNISHED PROPERTY

- (a) The Laboratory shall deliver to the Contractor, at the time and locations stated in this contract, the Laboratory-furnished property described in this contract. If that property, suitable for its intended use, is not delivered to the Contractor, the Laboratory shall equitably adjust affected provisions of this contract in accordance with the Changes clause when:
 - (1) The Contractor submits a timely written request for an equitable adjustment; and

- (2) The facts warrant an equitable adjustment.
- (b) Title to Laboratory-furnished property shall remain in the Government. The Contractor shall use the Laboratory-furnished property only in connection with this contract. The Contractor shall maintain adequate property control records in accordance with sound industrial practice and will make such records available for Laboratory inspection at all reasonable times.
- (c) Upon delivery of Laboratory-furnished property to the Contractor, the Contractor assumes the risk and responsibility for its loss or damage, except:
 - (1) For reasonable wear and tear; or
 - (2) To the extent property is consumed in performing this contract.
- (d) Upon completing this contract, the Contractor shall follow the instructions of the Laboratory regarding the disposition of all Laboratory-furnished property not consumed in performing this contract or previously delivered to the Laboratory. The Contractor shall prepare for shipment, deliver f.o.b. origin, or dispose of the Government property, as may be directed or authorized by the Laboratory. The net proceeds of any such disposal shall be credited to the contract price or shall be paid to the Laboratory as directed by the Laboratory.
- (e) If this contract is to be performed outside the United States of America, its territories, or possessions, the word "Government" (wherever it appears in this clause) shall be construed as "United States Government."

15. CONTRACT WORK HOURS AND SAFETY STANDARDS ACT -OVERTIME COMPENSATION

- (a) Overtime requirements. No Contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics, (see Federal Acquisition Regulation (FAR) 22.300) shall require or permit any such laborers or mechanics in any workweek in which the individual is employed on such work to work in excess of 40 hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than 1-1/2 times the basic rate of pay for all hours worked in excess of 40 hours in such workweek.
- (b) Violation; liability for unpaid wages; liquidated damages. In the event of any violation of the provisions set forth in paragraph (a) of this clause, the Contractor and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such Contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic employed in violation of the provision set forth in paragraph (a) of this clause in the sum of \$10 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of 40 hours without payment of the overtime wages required by provisions set forth in paragraph (a) of this clause.

- (c) Withholding for unpaid wages and liquidated damages. The Laboratory shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any monies payable on account of work performed by the Contractor or subcontractor under any such contract or any other Federal contract with the same Contractor, or any other Federally-assisted contract subject to the Contract Work Hours and Safety Standards Act which is held by the same Contractor, such sums as may be determined to be necessary to satisfy any liabilities of such Contractor or subcontractor for unpaid wages and liquidated damages as provided in the provisions set forth in paragraph (b) of this clause.
- (d) Payrolls and basic records. (1) The Contractor or subcontractor shall maintain payrolls and basic payroll records during the course of contract work and shall preserve them for a period of 3 years from the completion of the contract for all laborers and mechanics working on the contract. Such records shall contain the name and address of each such employee, social security number, correct classification, hourly rates of wages paid, daily and weekly number of hours worked, deductions made and actual wages paid. Nothing in this paragraph shall require the duplication of records required to be maintained for construction work by Department of Labor regulations at 29 CFR 5.5(a) (3) implementing the Davis-Bacon Act. (2) The records to be maintained under paragraph (d) (1) of this clause shall be made available by the Contractor or subcontractor for inspection, copying, or transcription by authorized representatives of the Laboratory or the Department of Labor. The Contractor or subcontractor shall permit such representatives to interview employees during working hours on the job.
- (e) Subcontracts. The Contractor or subcontractor shall insert in any subcontracts the provisions set forth in paragraphs (a) through (e) of this clause and also a clause requiring the subcontractors to include these provisions in any lower tier subcontracts. The Contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the provisions set forth in paragraphs (a) through (e) of this clause.

16. BUY AMERICAN ACT -SUPPLIES

- (a) The Buy American Act (41 U.S.C. 10) provides that the Government and the Laboratory give preference to domestic end products.

“Component,” as used in this clause, means those articles, materials, and supplies incorporated directly into the end products.

“Domestic end product,” as used in this clause, means (1) an unmanufactured end product mined or produced in the United States, or (2) an end product manufactured in the United States, if the cost of its components mined, produced, or manufactured in the United States exceeds 50 percent of the cost of all its components. Components of foreign origin of the same class or kind as the products referred to in subparagraphs (b)(2) or (3) of this clause shall be treated as domestic. Scrap generated, collected, and prepared for processing in the United States is considered domestic.

“End products,” as used in this clause, means those articles, materials, and supplies to be acquired for public use under this contract.

- (b) The Contractor shall deliver only domestic end products, except those:
 - (1) for use outside the United States;
 - (2) that the Government or Laboratory determines are not mined, produced, or manufactured in the United States in sufficient and reasonably available commercial quantities of a satisfactory quality;
 - (3) for which the agency determines that domestic preference would be inconsistent with the public interest; or
 - (4) for which the agency determines th[W1]e cost to be unreasonable (see FAR 25.105).

17. FEDERAL, STATE AND LOCAL TAXES

- (a) “Contract date,” as used in this clause, means the date set for bid opening or, if this is a negotiated contract or a modification, the effective date of this contract or modification.

“All applicable Federal, State, and local taxes and duties,” as used in this clause, means all taxes and duties, in effect on the contract date, that the taxing authority is imposing and collecting on the transactions or property covered by this contract.

“After-imposed Federal tax,” as used in this clause, means any new or increased Federal excise tax or duty, or tax that was exempted or excluded on the contract date but whose exemption was later revoked or reduced during the contract period, on the transactions or property covered by this contract that the Contractor is required to pay or bear as the result of legislative, judicial, or administrative action taking effect after the contract date. It does not include social security tax or other employment taxes.

“After-relieved Federal tax,” as used in this clause, means any amount of Federal excise tax or duty, except social security or other employment taxes, that would otherwise have been payable on the transactions or property covered by this contract, but which the Contractor is not required to pay or bear, or for which the Contractor obtains a refund or drawback, as the result of legislative, judicial, or administrative action taking effect after the contract date.

- (b) The contract price includes all applicable Federal, State, and local taxes and duties.
- (c) The contract price shall be increased by the amount of any after-imposed Federal tax, provided the Contractor warrants in writing that no amount for such newly imposed Federal excise tax or duty or rate increase was included in the contract price, as a contingency reserve or otherwise.

- (d) The contract price shall be decreased by the amount of any after-relieved Federal tax.
- (e) The contract price shall be decreased by the amount of any Federal excise tax or duty, except social security or other employment taxes, that the Contractor is required to pay or bear, or does not obtain a refund of, through the Contractor's fault, negligence, or failure to follow instructions of the Laboratory.
- (f) No adjustment shall be made in the contract price under this clause unless the amount of the adjustment exceeds \$100.
- (g) The Contractor shall promptly notify the Laboratory of all matters relating to any Federal excise tax or duty that reasonably may be expected to result in either an increase or decrease in the contract price and shall take appropriate action as the Laboratory directs.
- (h) The Laboratory shall, without liability, furnish evidence appropriate to establish exemption from any Federal, State, or local tax when the Contractor requests such evidence and a reasonable basis exists to sustain the exemption.

18. AUTHORIZATION AND CONSENT

The Government has given its authorization and consent for all use and manufacture of any invention described in and covered by a patent of the United States in the performance of this contract or any part hereof or any amendment hereto or any subcontract hereunder (including any lower-tier subcontract).

19. ASSIGNMENT

Neither this contract nor any interest therein nor claim thereunder shall be assigned or transferred by the Contractor except as expressly authorized in writing by the Laboratory. The Laboratory may assign the whole or any part of this contract to the Government or its designee.

20. SUBCONTRACTS FOR COMMERCIAL ITEMS AND COMMERCIAL COMPONENTS

- (a) Definition.

“Commercial item”, as used in this clause, means any item of supply that is of a type customarily used for non-governmental purposes that either has been sold, leased or licensed or offered for sale, lease or license to the general public.

“Subcontract”, as used in this clause, includes a transfer of commercial items between divisions, subsidiaries, or affiliates of the Contractor or subcontractor at any tier.

- (b) To the maximum extent practicable, the Contractor shall incorporate, and require its subcontractor at all tiers to incorporate, commercial items or nondevelopmental items as components of items to be supplied under this contract.
- (c) Notwithstanding any other clause of this contract, the Contractor is not required to include any FAR provision or clause, other than those listed below to the extent they are applicable and as may be required to establish the reasonableness of prices under Part 15, in a subcontract at any tier for commercial items or commercial components:
 - (1) 52.222-26, Equal Opportunity (E.O. 11246);
 - (2) 52.222-35, Affirmative Action for Special Disabled and Vietnam Era Veterans (38 U.S.C. 4212(a));
 - (3) 52.222-36, Affirmative Action for Handicapped Workers (29 U.S.C. 793); and
- (d) The Contractor shall include the terms of this clause, including this paragraph (d), in subcontracts awarded under this contract.

21. TERMINATION FOR CONVENIENCE OF THE LABORATORY

The Laboratory, by written notice, may terminate this contract, in whole or in part, when it is in the Laboratory's interest. If this contract is terminated, the rights, duties, and obligation of the parties, including compensation to the Contractor, shall be in accordance with Part 49 of the Federal Acquisition Regulation in effect on the date of this contract.

22. DEFAULT

- (a) (1) The Laboratory may, subject to paragraphs (c) and (d) below, by written notice of default to the Contractor, terminate this contract in whole or in part if the Contractor fails to:
 - (i) Deliver the supplies or to perform the services within the time specified in this contract or any extension;
 - (ii) Make progress, so as to endanger performance of this contract (but see subparagraph (a)(2) below); or
 - (iii) Perform any of the other provisions of this contract (but see subparagraph (a)(2) below).
- (2) The Laboratory's right to terminate this contract under subdivisions (1)(ii) and (1)(iii) above, may be exercised if the Contractor does not cure such failure within 10 days (or

more if authorized in writing by the Laboratory) after receipt of the notice from the Laboratory specifying the failure.

- (b) If the Laboratory terminates this contract in whole or in part, it may acquire, under the terms and in the manner the Laboratory considers appropriate, supplies or services similar to those terminated, and the Contractor will be liable to the Laboratory for any excess costs for those supplies or services. However, the Contractor shall continue the work not terminated.
- (c) Except for defaults of subcontractors at any tier, the Contractor shall not be liable for any excess costs if the failure to perform the contract arises from causes beyond the control and without the fault or negligence of the Contractor. Examples of such causes include (1) acts of God or of the public enemy, (2) acts of the Government in either its sovereign or contractual capacity, (3) fires, (4) floods, (5) epidemics, (6) quarantine restrictions, (7) strikes, (8) freight embargoes, and (9) unusually severe weather. In each instance the failure to perform must be beyond the control and without the fault or negligence of the Contractor.
- (d) If the failure to perform is caused by the default of a subcontractor at any tier, and if the cause of the default is beyond the control of both the Contractor and the subcontractor, and without the fault or negligence of either, the Contractor shall not be liable for any excess costs for failure to perform, unless the subcontracted supplies or services were obtainable from other sources in sufficient time for the Contractor to meet the required delivery schedule.
- (e) If this contract is terminated for default, the Laboratory may require the Contractor to transfer title and deliver to the Laboratory, as directed by the Laboratory, any (1) completed supplies, and (2) partially completed supplies and materials, parts, tools, dies, jigs, fixtures, plans, drawings, information, and contract rights (collectively referred to as “manufacturing materials” in this clause) that the Contractor has specifically produced or acquired for the terminated portion of this contract. Upon direction of the Laboratory, the Contractor shall also protect and preserve property in its possession in which the Laboratory or the Government have an interest.
- (f) The Laboratory shall pay the contract price for completed supplies delivered and accepted. The Contractor and the Laboratory shall agree on the amount of payment for manufacturing materials delivered and accepted and for the protection and preservation of the property. The Laboratory may withhold from these amounts any sum the Laboratory determines to be necessary to protect the Laboratory against loss because of outstanding liens or claims of former lien holders.
- (g) If, after termination, it is determined that the Contractor was not in default or that the default was excusable, the rights and obligations of the parties shall be the same as if the termination had been issued for the convenience of the Laboratory.
- (h) The rights and remedies of the Laboratory in this clause are in addition to any other rights and remedies provided by law or under this contract.

23. ANTI-KICKBACK PROCEDURES

(a) Definitions.

- (1) “Kickback,” as used in this clause, means any money, fee, commission, credit, gift, gratuity, thing of value, or compensation of any kind which is provided, directly or indirectly, to any prime Contractor, prime Contractor employee, subcontractor, or subcontractor employee for the purpose of improperly obtaining or rewarding favorable treatment in connection with a prime contract or in connection with a subcontract relating to a prime contract.
- (2) “Person,” as used in this clause, means a corporation, partnership, business association of any kind, trust, joint-stock company, or individual.
- (3) “Prime Contract,” as used in this clause, means a contract or contractual action entered into by the United States for the purpose of obtaining supplies, materials, equipment, or services of any kind.
- (4) “Prime Contractor,” as used in this clause, means a person who has entered into a prime contract with the United States.
- (5) “Prime Contractor Employee,” as used in this clause, means any officer, partner, employee, or agent of a prime Contractor.
- (6) “Subcontract,” as used in this clause, means a contract or contractual action entered into by a prime Contractor or subcontractor for the purpose of obtaining supplies, materials, equipment, or services of any kind under a prime contract.
- (7) “Subcontractor,” as used in this clause, (1) means any person, other than the prime Contractor, who offers to furnish or furnishes any supplies, materials, equipment, or services of any kind under a prime contract or a subcontract entered into in connection with such prime contract, and (2) includes any person who offers to furnish or furnishes general supplies to the prime Contractor or a higher-tier subcontractor.
- (8) “Subcontractor Employee,” as used in this clause, means any officer, partner, employee, or agent of a subcontractor.

(b) The Anti-Kickback Act of 1986 (41 U.S.C. 51-58) (the Act), prohibits any person from --

- (1) Providing or attempting to provide or offering to provide any kickback;
- (2) Soliciting, accepting, or attempting to accept any kickback; or

- (3) Including, directly or indirectly, the amount of any kickback in the contract price charged by a prime Contractor to the United States or in the contract price charged by a subcontractor to a prime Contractor or higher-tier subcontractor.
- (c)
 - (1) The Contractor shall have in place and follow reasonable procedures designed to prevent and detect possible violations described in paragraph (b) of this clause in its own operations and direct business relationships.
 - (2) When the Contractor has reasonable grounds to believe that a violation described in paragraph (b) of this clause may have occurred, the Contractor shall promptly report, in writing, the possible violation. Such reports shall be made to the inspector general of the contracting agency, the head of the contracting agency if the agency does not have an inspector general, or the Department of Justice.
 - (3) The Contractor shall cooperate fully with any Federal agency investigating a possible violation described in paragraph (b) of this clause.
 - (4) The Contracting Officer may (i) offset the amount of the kickback against any monies owed by the United States under the prime contract and/or (ii) direct that the prime Contractor withhold from sums owed a subcontractor under the prime contract, the amount of the kickback. The Contracting Officer may order that monies withheld under subdivision (c)(4)(ii) of this clause be paid over to the Government unless the Government has already offset those monies under subdivision (c)(4)(i) of this Clause. In either case, the prime Contractor shall notify the Contracting Officer when the monies are withheld.
 - (5) The Contractor agrees to incorporate the substance of this clause, including subparagraph (c)(5) but excepting subparagraph (c)(1), in all subcontracts under this contract.

24. RESTRICTIONS ON CERTAIN FOREIGN PURCHASES

- (a) Unless advance written approval of the Laboratory Procurement Official is obtained, the Contractor shall not acquire, for use in the performance of this contract, any supplies or services originating from sources within, or that were located in or transported from or through, countries whose products are banned from importation into the United States under regulations of the Office of Foreign Assets Control, Department of the Treasury. Those countries include Cuba, Iran, Iraq, Libya, and North Korea.
- (b) The Contractor shall not acquire for use in the performance of this contract any supplies or services from entities controlled by the Government of Iraq.
- (c) The Contractor agrees to insert the provisions of this clause, including this paragraph (c) in all subcontracts hereunder.

25. SUSPECT/COUNTERFEIT PARTS

- (a) “Suspect/Counterfeit Parts” are parts that may be of new manufacture, but labeled to represent a different class of parts, or used and /or refurbished parts, complete with false labeling, that are represented as new parts. Three categories of suspect/counterfeit parts exist:
 - (1) Fasteners, including bolts and nuts, made of carbon steel (designated as grade five or grade eight) or stainless steel, with headmarks or stamps shown on the headmark list that was prepared by the United States Customs Service (see Attachment I to this clause, or its latest revision);
 - (2) Piping valves and flanges bearing labels that falsely indicate that the items meet recognized ASME or ASTM consensus standards; and,
 - (3) Used or refurbished molded-case electrical circuit breakers or similar type switch gear.
- (b) Supplies furnished to the Laboratory under this contract shall not include suspect/counterfeit parts nor shall such parts be used in performing any work under this contract whether on or off the Laboratory site.
- (c) If suspect/counterfeit parts are furnished under this contract and are found on the Laboratory site, such parts shall be impounded by the Laboratory or they shall be removed by the Contractor as directed by the Laboratory. The Contractor shall promptly replace such parts with supplies acceptable to the Laboratory and the Contractor shall be liable for all costs relating to impoundment, removal, and replacement.
- (d) The rights of the Laboratory in this clause are in addition to any other rights provided by law or under this contract.

26. SECURITY

- (a) Responsibility. It is the Contractor's duty to safeguard all classified information, special nuclear material, and other DOE property. The Contractor shall, in accordance with DOE security and counterintelligence regulations and requirements, be responsible for safeguarding all classified, unclassified sensitive and proprietary information and protecting against sabotage, espionage, loss and theft of the classified unclassified sensitive, and proprietary matter in the Contractor's possession in connection with the performance of work under this contract. Except as otherwise expressly provided in this contract, the Contractor shall, upon completion or termination of this contract, transmit to the Laboratory or DOE any classified, unclassified sensitive, and proprietary matter in the possession of the Contractor or any person under the Contractor's control in connection with performance of this contract. If retention by the Contractor of any classified, unclassified sensitive and proprietary matter in the Contractor's possession is required after the completion or termination of the contract and such retention is approved by the Laboratory or DOE, the Contractor shall complete a certificate of possession to be furnished to the Laboratory

or DOE specifying the classified, unclassified sensitive, and proprietary matter in the Contractor's possession are to be retained. The certification shall identify the items and types or categories of matter retained, the conditions governing the retention of the matter, and the period of retention, if known. If the retention is approved by the Laboratory or DOE, the security provisions of the contract shall continue to be applicable to the matter retained. Special nuclear material shall not be retained after the completion or termination of the contract.

- (b) Regulations. The Contractor agrees to comply with all safeguards, security and counterintelligence regulations and requirements of DOE in effect at the date of the award.
- (c) Definition of Classified Information. The term "classified information" means Restricted Data, Formerly Restricted Data, or National Security Information.
- (d) Definition of Restricted Data. The term "Restricted Data" means all data concerning (1) design, manufacture, or utilization of atomic weapons; (2) the production of special nuclear material; or (3) the use of special nuclear material in the production of energy, but shall not include data declassified or removed from the Restricted Data category pursuant to Section 142 of the Atomic Energy Act of 1954, as amended.
- (e) Definition of Formerly Restricted Data. The term "Formerly Restricted Data" means all data removed from the Restricted Data category under section 142 d. of the Atomic Energy Act of 1954, as amended.
- (f) Definition of National Security Information. The Term "National Security Information" means any information or material, regardless of its physical form or characteristics, that is owned by, produced for or by, or is under the control of the United States Government, that has been determined pursuant to Executive Order 12356 or prior Orders to require protection against unauthorized disclosure, and which is so designated.
- (g) Definition of Special Nuclear Material (SNM) . SNM means (1) plutonium, uranium enriched in the isotope 233 or in the isotope 235, and any other material which pursuant to the provisions of Section 51 of the Atomic Energy Act of 1954, as amended, has been determined to be special nuclear material, but does not include source material; or (2) any material artificially enriched by any of the foregoing, but does not include source material.
- (h) Security Clearance of Personnel. The Contractor shall not permit any individual to have access to any classified information, except in accordance with the Atomic Energy Act of 1954, as amended, Executive Order 12356, and the DOE's regulations or requirements applicable to the particular level and category of classified information to which access is required.
- (i) Criminal Liability. It is understood that disclosure of any classified information relating to the work or services ordered hereunder to any person not entitled to receive it, or failure to safeguard any classified information that may come to the Contractor or any person under the Contractor's control in connection with work under this contract, may subject the Contractor, its agents, employees, or subcontractors to criminal liability under the laws of the United States. (See the

Atomic Energy Act of 1954, as amended, 42 U.S.C. 2100 et seq.; 18 U.S.C. 793 and 794; and Executive Order 12356).

- (j) Subcontracts and Purchase Orders. Except as otherwise authorized in writing by the Laboratory, the Contractor shall insert provisions similar to the foregoing in all subcontracts and purchase orders under this contract.

27. LABORATORY SITE ACCESS BY NON-U.S. NATIONALS

Site access by all non-U.S. citizens must be reviewed and approved by the Laboratory Director or his designee. All new requests must be submitted on Form ANL-593. Non-U.S. citizens are either visitors (on site for less than 30 days in a 12-month period) or assignees (on site for more than 30 days in a 12-month period). A certified host must be assigned for each visit or assignment. Form ANL-593 should be submitted as far in advance as possible.

For visits and assignments involving a foreign national from a non-sensitive country, and which do not involve sensitive subjects or access to security areas, the Laboratory generic security plan is applicable, and indices checks are not required. However, time is required for review of the ANL-593 and approval by the Laboratory of the visit.

For visits or assignments involving a foreign national from a "Sensitive Country", and/or access to a security area of the Laboratory or access to a sensitive subject, at least 30 days advance notice should be provided to ensure that Security, Counterintelligence, and Export Control reviews can be accomplished, and a DOE indices check can be completed prior to approval. In such cases, a specific security plan is required to be submitted to the Foreign Visits and Assignments Office with the ANL-593 form requesting the visit.

For visits or assignments involving a foreign national from a "Terrorist Supporting Country", (which currently include: Cuba, Iran, Iraq, Libya, North Korea, Sudan, Syria), specific approval of the visit/assignment by the Secretary of Energy is required. This approval, if granted, may take six months. Information, in addition to that required on the ANL-593, is necessary for the request to the Secretary. For assistance in preparing a request, contact the ANL Foreign National Visits and Assignments Administrator (Phone: 630-252-1142).

In any case involving a sensitive subject, a visit or assignment by a national from a sensitive country, or entry into a security area, lead time prior to the anticipated start of the visit/assignment is especially important. An indices check normally takes 30 days, but can take considerably longer (once obtained, an indices check may be valid for two years).

28. ENVIRONMENTAL PROTECTION

In performing this contract the Contractor shall comply with the requirements set forth in all applicable Federal and non-Federal environmental protection laws, codes, ordinances, Executive Orders, regulations and directives.

29. WHISTLEBLOWER PROTECTION FOR CONTRACTOR EMPLOYEES

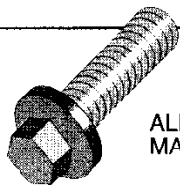
- (a) The Contractor shall comply with the requirements of the “DOE Contractor Employee Protection Program” at 10CFR Part 708 for work performed on behalf of DOE directly related to activities at DOE-owned or leased sites.
- (b) The Contractor shall insert or have inserted the substance of this clause, including this paragraph (b), in subcontracts at all tiers, for subcontracts involving work performed on behalf of DOE directly related to activities at DOE-owned or leased sites.

30. VEHICLE LIABILITY INSURANCE COVERAGE

In the event a Government or Laboratory vehicle (including Laboratory-rented vehicle) will be utilized by the contractor during the course of work under this contract, contractor agrees to obtain and maintain appropriate levels of automobile liability coverage for property damage and bodily injury and such insurance shall be primary.

31. INTEGRATION CLAUSE

This contract represents the full understanding of the parties and is the entire agreement between the parties. All negotiations between the parties have been merged into the contract and there are no understandings or agreements other than those incorporated into this contract.

SUSPECT/COUNTERFEIT PART**HEADMARK LIST**

ALL GRADE 5 AND GRADE 8 FASTENERS OF FOREIGN ORIGIN WHICH DO NOT BEAR ANY MANUFACTURERS' HEADMARKS



Grade 5



Grade 8

GRADE 5 FASTENERS WITH THE FOLLOWING MANUFACTURERS' HEADMARKS:



MARK

J

MANUFACTURER

Jinn Her (TW)



MARK

KS

MANUFACTURER

Kosaka Kogyo (JP)

GRADE 8 FASTENERS WITH THE FOLLOWING MANUFACTURERS' HEADMARKS:



MARK

A

MANUFACTURER

Asahi Mfg. (JP)



NF

Nippon Fasteners (JP)



H

Hinomoto Metal (JP)



M

Minamida Sieybo (JP)



MS

Minato Kogyo (JP)

Hollow
Triangle

Infasco (CA TW JP YU) (Greater than 1/2 inch dia)



E

Daiei (JP)



MARK

KS

MANUFACTURER

Kosaka Kogyo (JP)



RT

Takai Ltd (JP)



FM

Fastener Co of Japan (JP)



KY

Kyoei Mfg (JP)



J

Jinn Her (TW)



MARK

UNY

Unytite (JP)

GRADE 8.2 FASTENERS WITH THE FOLLOWING HEADMARKS:



MARK

KS

MANUFACTURER

Kosaka Kogyo (JP)

GRADE A325 FASTENERS (BENNETT DENVER TARGET ONLY) WITH THE FOLLOWING HEADMARKS:

Type 1



MARK

A325 KS

MANUFACTURER

Kosaka Kogyo (JP)

Type 2



Type 3



Headmarkings are usually raised – sometimes indented.

KEY: CA-Canada, JP-Japan, TW-Taiwan, YU-Yugoslavia



ANY BOLT ON THIS LIST SHOULD BE TREATED AS DEFECTIVE WITHOUT FURTHER TESTING.

OR, IF YOU SEE ANY INDICATION THAT A CIRCUIT BREAKER MAY BE USED OR REFURBISHED (SEE BULLETIN, NO. DOE/EH-0266)